case the language of the agreement was, "this agreement shall be void, and the above two hundred dollars refunded." The court said: "The provision is absolute that *this agreement—i. e., the whole agreement*—shall be *void.*" *Mackey* v. *Ames* (1883), 31 Minn. 103. In the last case considered by the dissenting judge the contract provided: "It is agreed that if the title to said premises is not good, and cannot be made good, this agreement shall be void and the above $50 refunded." The court was of the opinion that the contract contained no ambiguity, and was void as to both parties, adding: "The rule of practical construction applies only in cases where the contract is indefinite, uncertain, or susceptible of different interpretations." *Schwab* v. *Baremore* (1905), 95 Minn. 295. The writer was able to find only one other case where the provisions in the contract were practically identical with those of the principal case. That case was decided like the last three considered. *Marchman* v. *Fowler* (1916), 145 Ga. 682. In *Weatherford* v. *James* (1841), 2 Ala. 170, the defendant contracted to sell certain lands if he could give a marketable title, and further agreed that if he could not give such title he would execute a mortgage upon certain slaves to secure repayment of the purchase money. He could not give a marketable title, but the court held that a conveyance with abatement could not be demanded of the defendant, the theory being that the contract to convey the land depended absolutely upon the contingency. For cases analogous to the principal case, in which it was held that the vendor could not be compelled to perform, see *Duddell* v. *Simpson* (1866), L. R. 2 Ch. 102; *Mawson* v. *Fletcher* (1870), L. R. 6 Ch. 91; *Hoy* v. *Smythies* (1856), 22 Beav. 510. For the same interpretation of a statute where a similar question was raised, see *Mundy* v. *Shellaberger,* 161 Fed. 503.

SPECIFIC PERFORMANCE—RELIEF ON TERMS VARYING FROM THE CONTRACT. —Plaintiff contracted to buy and the defendant to sell certain real property. About $1,000 had been paid. On February 1 an interest installment fell due and was unpaid. On April 12 the vendor served notice of forfeiture pursuant to the terms of the contract. On April 23 he sold the premises to a third party, who had notice of the facts. On April 27 the plaintiff tendered the amount due, with the excuse that he had not known it was overdue. Tender was refused. Plaintiff sued for specific performance. *Held,* upon payment within 30 days of the entire unpaid purchase price (although the remainder of the price, amounting to about $3,000, would not have fallen due under the terms of the contract for some years to come), all interest and taxes in arrears, compensation for improvements made by the third party purchaser, $50 attorney's fees, and costs, the plaintiff may recover. *Hubbell* v. *Ohler* (1921), 213 Mich. 664.

In spite of the express terms of the contract, the Michigan court declined to permit a forfeiture of the payments made. The underlying principle of the decision is not new to equity jurisprudence. "Equity abhors a forfeiture." The treatment accorded the express provisions of the mortgage is closely analogous. *Richmond* v. *Robinson,* 12 Mich. 193. The interesting feature of the decision in the principal case is the fact that the court,

in decreeing specific performance, brushes aside the express terms of the contract, and in an attempt to adjust the rights of the litigants equitably, lays down its own terms. The equity of the plaintiff's position was far from strong. He had no better excuse for the delay in payment than oversight, and he had permitted waste on the premises. Consequently, his remissness was very properly reflected in the decree. Note that he was required, as a condition precedent to receiving conveyance, to pay the entire unpaid purchase price within 30 days, although under the terms of the contract he would have had some 28 years in which to pay. It has been argued that the court must enforce the contract literally or not at all,—that it cannot make over the agreement of the parties. But this argument is not tenable. Decreeing relief lies wholly within the discretion of the court and the terms of relief may be moulded to fit the circumstances of each case. If the plaintiff's equities are strong the decree may be lenient; if weak, harsh; if too weak, relief may be refused altogether. Ordinarily, however, compensation can be required for the delay without punishing it by forfeiture. In *Noyes* v. *Bragg,* 220 Mass. 106, another suit by vendee against vendor, it is true that the appellate court reversed the superior court, which had ordered present payment of future installments, and ordered the contract to be performed literally according to its terms, thereby giving the vendee the benefit of the installment plan of payment. However, in that controversy the vendor was at fault and the conduct of the vendee was unimpeachable. In *King* v. *Ruckman,* 24 N. J. Eq. 556, the court, instead of accelerating the date of payment, as in the principal case, or enforcing the terms of the contract literally, as in *Noyes* v. *Bragg,* actually extended the time of payment beyond that agreed to by the parties. The vendor had wrongfully kept the vendee from taking possession for five years beyond the agreed date, and he was very properly penalized for his conduct. So the terms of the contract are not necessarily sacred. Yet courts have not always recognized the possibility of the decree *cy pres,* and have often contented themselves with a literal enforcement of the contract or nothing. The obvious equity of a modification of the agreed terms under certain circumstances compels commendation of such action. The chancellor is thereby given a really effective weapon for the enforcement of fair dealing in business transactions. The principal case is worthy of note as an illustration of the exercise of such power.

STATUTE OF FRAUDS—SUFFICIENCY OF MEMORANDUM—OMISSION OF TERM FAVORABLE TO THE DEFENDANT.—Vendee seeking specific performance of a contract for sale of land, stated as one of the terms agreed upon that he (vendee) was to assume a mortgage for $800 then existing on the property, and to give an additional mortgage for $1,200 to make up the $2,000 balance which would be due under the contract. The memorandum offered to prove the contract, although apparently sufficient in all respects to satisfy the Statute of Frauds, made no mention of this mortgage of $800 or its assumption by the vendee, but indicated rather that the vendee was to give a mortgage for the entire $2,000. *Held,* by a divided court, that the memorandum